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NORTHERN DISTRICT OF CALIFORNIA

JCS

THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

C 07 3330

Docket No.

9 CALIFORNIA PACIFIC BANK,  
 10 a California banking corporation,

11 Plaintiff,  
 vs.

12 BANK OF AMERICA, N.A.,  
 13 and DOES 1-20, inclusive.

14 Defendants.

15 COMPLAINT FOR BREACH OF CONTRACT  
 (FAILURE TO HONOR IRREVOCABLE  
 STANDBY LETTER OF CREDIT), BREACH  
 OF COVENANT OF GOOD FAITH AND  
 FAIR DEALING

[DEMAND FOR JURY TRIAL]

16 Plaintiff California Pacific Bank, a California banking corporation ("CPB") alleges as follows:

JURISDICTION

17 1. CPB is a corporation incorporated under the laws of the State of California having its  
 18 principal place of business in the State of California.

19 2. Defendant Bank of America, N.A. ("BofA"), is a national bank having its principal place  
 20 of business in the State of North Carolina. Additionally, all Doe Defendants are citizens of states other  
 21 than California.

22 3. This Court has original jurisdiction over CPB's claims under 28 U.S.C. §1332 in that the  
 23 subject matter of the controversy exceeds, exclusive of costs and interests, the sum of \$75,000 and is  
 24 between citizens of different states.

VENUE

25 2. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(a)  
 26 because all defendants reside in the Northern District of California and under 28 U.S.C. §1391(b)  
 27 because a substantial part of the actions or omissions giving rise to this case occurred within the

1 Northern District of California. Alternatively, venue is proper under 28 U.S.C. § 1333(c) in that all of the  
 2 defendants are subject to personal jurisdiction in the Northern District of California at the time the  
 3 action is commenced, and there is no district in which the action may otherwise be brought.

4 **FACTUAL ALLEGATIONS**

5       3. In March, 2007, QiBee, Inc., a California corporation ("QiBee"), contacted CPB in  
 6 connection with obtaining a loan from CPB which loan was intended to fund a purchase of 8,160 high  
 7 definition LCD televisions from NBG, LLC, a Florida limited liability company ("NBG").

8       4. On April 13, 2007 CPB issued a loan in the principal amount of \$370,800.00 to QiBee,  
 9 which loan had a term of 60 days, commencing April 16, 2007 and maturing June 15, 2007 (the "CPB  
 10 Loan").

11      4. As security for the CPB Loan, NBG was required to obtain an Irrevocable Standby  
 12 Letter of Credit in favor of CPB in the amount of \$412,080.00.

13      5. NBG contacted BofA at its Scranton, Pennsylvania offices for purposes of issuing the  
 14 Irrevocable Standby Letter of Credit.

15      6. On March 30, 2007 BofA issued an Irrevocable Standby Letter of Credit, Document No.  
 16 68017913, in the amount of \$412,080.00 naming CPB as the sole Beneficiary (the "Letter of Credit").  
 17 The Letter of Credit permits CPB to make a demand for reimbursement to BofA in an amount up to  
 18 \$412,080.00 at any time QiBee fails to pay its indebtedness on the CPB Loan.

19      7. As issued on March 30, 2007, the Letter of Credit provided that QiBee had to obtain its  
 20 own letter of credit in favor NBG. However, on April 9, 2007, BofA amended the Letter of Credit to  
 21 delete all reference to the letter of credit in favor of NBG.

22      8. The Letter of Credit specifically states that CPB may make a demand for  
 23 reimbursement by submitting a claim on the "SWIFT" electronic banking system.

24      9. On May 29, 2007, QiBee informed CPB that QiBee would not be repaying the  
 25 indebtedness due on the CPB Loan.

26      10. On May 29, 2007, CPB submitted a claim to BofA on the "SWIFT" electronic banking  
 27 system, as was its right under the terms of the Letter of Credit, demanding payment of the total \$412,080.00.

1           11. On June 1, 2007, BofA responded by "SWIFT" to CPB's May 29, 2007 demand for  
 2 payment on the Letter of Credit by contending that CPB's claim was improper because it was submitted  
 3 on "SWIFT." BofA did not list any other bases for rejecting CPB's demand for payment, nor did BofA  
 4 contest CPB's underlying right to the funds.

5           12. The same day, after receiving BofA's rejection, CPB telephoned BofA employee Mike  
 6 Evans regarding BofA's rejection of CPB's "SWIFT" demand of May 29, 2007. Mr. Evans suggested  
 7 CPB add language about QiBee's failure to pay the indebtedness to CPB's "SWIFT" demand.

8           13. Also on June 1, 2007, CPB re-submitted its demand for payment under the Letter of  
 9 Credit, requesting payment of \$412,080, with the additional language suggested by Mr. Evans.

10          14. BofA has refused, and continues to refuse, to honor its obligation under the Letter of  
 11 Credit, in that it has failed to remit any of the \$412,080 due to CPB under the Letter of Credit.

#### FIRST CLAIM FOR RELIEF

##### **(Breach of Contract, Failure to Honor, Irrevocable Standby Letter of Credit)**

15          15. CPB repeats and realleges each and every allegation contained hereinabove as  
 though fully set forth herein.

16          16. CPB, as the beneficiary of the March 30, 2007 Letter of Credit, is entitled to receive  
 \$412,080 from BofA pursuant to demand because QiBee has defaulted on its CPB Loan obligation.

17          17. CPB made two demands for payment of the \$412,080 under the Letter of Credit to  
 BofA on May 29, 2007 and June 1, 2007.

18          18. BofA has failed to honor its obligation in that it has failed to remit any amount to CPB  
 of the \$412,080 demanded. To date, CPB has not received any of the money due to it, and the same  
 remains due and owing.

19          19. Pursuant to Section 5111(e) of the California Commercial Code, CPB is entitled to  
 attorney's fees and costs incurred in enforcing its legal rights pursuant to Letter of Credit.

20          **WHEREFORE**, Plaintiff prays for relief as set forth hereinafter in the prayer for relief.

#### SECOND CLAIM FOR RELIEF

##### **(Breach of Covenant of Implied Covenant of Good Faith and Fair Dealing)**

20. Plaintiff repeats and realleges each and every allegation contained hereinabove as though fully set forth herein.

21. Implied in the Letter of Credit, was and is the duty of good faith and fair dealing owed by BofA to CPB.

22. BofA breached its duties of good faith and fair dealing owed pursuant to the Letter of Credit when it refused to honor CPB's demands for payment.

23. As a direct and proximate result of the BofA's conduct and its breach of its duties of good faith and fair dealing, CPB has suffered damages in the amount of \$412,080.

## PRAYER FOR RELIEF

**Plaintiff requests:**

1. Judgment against Defendants and each of them according to proof for general damages with interest;

2. Judgment against Defendants and each of them according to proof for incidental damages with interest;

3. Attorneys' fees and costs pursuant to Section 5111(e) of the California Commercial Code and/or other applicable statutes;

4. For a jury trial which is hereby demanded; and

5. Such other and further relief as the Court may deem proper.

Dated: June 22, 2007

~~NIVEN & SMITH~~

By:

~~LEO M. LaROCCA~~

Attorneys for Plaintiff CALIFORNIA PACIFIC BANK,  
a California banking corporation

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issues triable before a jury.

Dated: June 22, 2007

~~NIVEN & SMITH~~

By:

~~LEO M. LaROCCA~~

Attorneys for Plaintiff CALIFORNIA PACIFIC BANK,  
a California banking corporation